

PT 00-52

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**VICTORY
MINISTRIES,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 98-PT-0093
(97-16-0785)**

**Real Estate Tax Exemption for
1997 Assessment Year**

**P.I.N.S: 17-27-436-017
17-27-436-018
17-27-436-050**

**Alan I. Marcus
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION
PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

APPEARANCE: Ms. Joanne P. Elliot of Elliot and Associates on behalf of the Victory Ministries (hereinafter the "applicant").

SYNOPSIS: This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on August 27, 1998. Said determination found that real estate identified by Cook County Parcel Index Numbers 17-27-436-017, 17-27-436-018 and 17-27-436-050 (hereinafter collectively referred to as the "subject property") was not "used exclusively for religious purposes," as required by Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et*

seq (hereinafter the “Code”) during the 1997 assessment year. At issue herein is whether the subject property was so used.

The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (hereinafter the “Board”) on June 9, 1998. The Board reviewed applicant’s complaint and recommended to the Department that the requested exemption be denied. The Department accepted this recommendation by issuing the aforementioned determination, which found that the subject property was not in exempt use during 1997. Applicant filed a timely appeal as to this denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that that applicant’s motion be denied in part and granted in part.

FINDINGS OF FACT:

1. The Department’s jurisdiction over this matter and its position therein are established by the determination, issued by the Office of Local Government Services on August 27, 1998, finding that subject property was not in exempt use during 1997.
2. The Application for Property Tax Exemption, filed with the Department on July 16, 1998, indicates that the subject property is located at 356-368 W. Chicago Ave, Chicago, IL 60610.
3. A plat of survey reveals that the subject property is improved with a 3½ story building and two separate parking areas. Applicant Motion Ex. No. C.
4. The building and the first parking area are situated on Parcel Index Numbers 17-04-436-017 and 17-04-436-018; the second parking area is located on Parcel Index Number 17-04-436-050. Applicant Motion Ex. C, D.

5. Applicant, a Christian church, obtained ownership of the subject property by means of two separate warranty deeds. The first, dated August 29, 1995, provided ownership of parcels 17-27-436-017 and 17-27-436-018; the second, dated October 25, 1995, conferred ownership of parcel 17-27-436-050. Applicant Motion Ex. A, D.
6. Applicant purchased the subject property with the intention of using it as a church complex. However, the property was in a state of extreme disrepair, and required extensive renovations, on the dates of purchase. Applicant Motion Ex. F, H, K.
7. Applicant planned and partially executed a comprehensive renovations project after it acquired ownership. It financed the project primarily through three bond issues which it collateralized with liens on the subject property. Applicant Motion Ex. No. F, G, H, K, M.
8. Significant highlights¹ of the renovation project are as follows:

DATE(S)	EVENT(S)
10/95 to 6/96	<ul style="list-style-type: none">• Applicant works with first architect to develop and draw blueprints
12/95	Sprinkler system bursts creating water damage to stairwells and first floor.

1. For more detailed chronology of applicant's project and the documentation in support thereof, *see*, Applicant Motion Ex. F, G, H, K.

DATE(S) (Cont'd)	EVENT(S)
3/96	<ul style="list-style-type: none"> • Break in causes damage to HVAC systems, bathrooms and stairwell and stairwells.
3/96 to 4/96	<ul style="list-style-type: none"> • Applicant repairs damage to north stairwell caused by break in; • Applicant also repairs stringers, risers, landings and fallings.
4/96 to 9/96	<ul style="list-style-type: none"> • Applicant secures the building and boards up broken windows; • Applicant makes plumbing, electrical and other internal repairs; • Applicant begins HVAC installations, and also, installs interior duct work.
7/96	<ul style="list-style-type: none"> • First architect does not deliver plans in a timely manner, so applicant begins working with another architect.
8/96 to 9/96	<ul style="list-style-type: none"> • Applicant begins the process of renovating the top (5th) floor for use as a private prayer area for its pastor; • Applicant continues the process of making other interior repairs.
10/96	<ul style="list-style-type: none"> • Second architect dies, forcing applicant to search for a third architect
10/96 to 12/97	<ul style="list-style-type: none"> • Applicant suspends further reconstruction work on the building due to lack of necessary permits. Despite this, applicant selects a third architect, develops and finalizes architectural blueprints, pays necessary invoices when due, applies for required building permits, raises funds for, and prepares necessary financial information pertaining to, the third bond issue.

Id.

9. Despite experiencing numerous difficulties with its renovation project, applicant was able to hold weekly prayer services in the building from May 1, 1997 until August 30,

1997. The members of applicant's congregation who attended these services would begin praying on the first floor and then continue until they prayed on each of the upper floors. They would also park in the two adjacent parking areas while they attended services. Applicant Motion Ex. G-13, L, M, N, Q.

10. Applicant made over \$167,000.00 in invoice payments during 1997. It also made more than \$9,000.00 in bond payments over the course of that year. However, increasing debt, lack of funding and cost overruns forced applicant to reevaluate, and eventually abandon, the entire renovation project. Applicant Motion Ex. G, G-2, H, M.

11. Applicant sold the subject property to another entity in September of 1998. Applicant Motion Ex. O, P.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether applicant's use of the subject property during 1997 qualifies as being as "exclusively ... religious," as within the meaning of Section 15-40 of the Property Tax Code. For the following reasons, I conclude that the subject property was in exempt use, but only during the four month period that began May 1, 1997 and ended August 31, 1997. In support thereof, I make the following conclusions:

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Statutes conferring property tax exemptions are to be strictly construed, with all facts construed and debatable questions or doubts resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The applicable statute mandates that applicant demonstrate that it actually put the subject property to, or was actively developing said property for, some specifically identifiable exempt use during the period in question. *See*, 35 ILCS 200/15-40; *Compare*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt); *with*, People ex rel. Pearsall v. Catholic Bishop of Chicago 311 Ill. 11 (1924) (hereinafter “Pearsall”) (all portions of seminary property being actively developed for seminary-related purposes, except one tract which lie fallow throughout

relevant tax year, held exempt). *See also*, Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987) (hereinafter “Weslin”) (part of medical facility that was under active construction during tax year in question held exempt).

In this case, it is true that applicant was actively engaged in making significant repairs to the subject property following its purchase. However, it made all of those repairs prior to 1997, which is the tax year currently in question. Evidence pertaining to applicant’s use of the subject property during that tax year, and not any other, is what is relevant herein. *Accord*, People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), (holding that the issue of property tax exemption necessarily depends on the statutory provisions that are in force during the period or tax year for which the exemption is claimed). Therefore, all remaining analysis must focus on the nature and extent of applicant’s exempt use during 1997.

The case of Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1st Dist. 1998) is instructive on this point. There, the court considered whether a church building that had suffered severe structural damage in a fire could qualify for exemption under the then-existing version of Section 15-40.² The church had been regularly used for exempt purposes prior to the tax year in question. However, those uses were severely curtailed throughout the relevant period due to damage from the fire. Mount Calvary at 666-670.

The court held the church exempt. In doing so, the court relied on testimony which proved that some of the church’s members would pray at the building during the tax year in question. Thus, the court concluded “to the extent the burned church was used

2. That version (which for present purposes is substantially identical to Section 15-40) was found in Section 19.2 of the Revenue Act of 1939, Ill. Rev. Stat. ch. 120, ¶¶ 482-811, 500.2.

[during that tax year], it was used exclusively for a religious purpose.” Mount Calvary at 669.

Here, applicant used the subject property for similar purposes throughout May, June, July and August of 1997. Applicant conducted weekly worship services, which began on the first floor of the building and progressed to each upper floor thereof, during those four months. Therefore, applicant is entitled to have the building exempted from real estate taxes for those four months of the 1997 assessment year as a matter of law.

Applicant is not, however, entitled to judgment as a matter of law with respect its use of the building throughout those 8 months, (specifically January, February, March, April, September, October, November and December, 1997) which comprised the remainder of the 1997 assessment year.³ Applicant’s uses of the building during those 8 months are distinct from those found exempt from Mount Calvary in several respects. First, the building was not the site of an existing church. *See* Mount Calvary at 696. Rather, it was the location of a dilapidated building that applicant *intended* to use as a church complex.

It is well settled that actual, and not intended, use is the determinative factor as to exempt use. Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994). More importantly, the court in Mount Calvary was careful to point out that the church was one “which *but for* the [intervening] fire, presumably would have continued to be used, as it had been for years, as a place of worship.” Mount Calvary at 669 (emphasis added).

3. The Property Tax Code defines the term “year” as meaning a 12 month “calendar year.” *See*, 35 ILCS 200/1-155.

The same cannot be said here, for this is not a case where a single, intervening Act of G-D caused interruption of an otherwise exempt use. Rather, it is one where multiple intervening causes combine to produce uncertainty and speculation as to whether applicant would ever complete its ambitious renovation project.

One such cause, lack of necessary permits, rendered it legally impossible for applicant to make any renovations or repairs to the building all through 1997. Other causes, such as increasing debt and lack of necessary funding and cost overruns, posed substantial threats to the viability of applicant's project. Under these circumstances, I can only conclude that applicant's prospects for actually completing the intended work were doubtful, at best.

Applicant seeks to alleviate these doubts by relying on the chronology it submitted as Applicant Motion Ex. G. This document details the extensive administrative efforts applicant made to resolve the aforementioned obstacles. It also provides a comprehensive accounting of the expenditures applicant made in conjunction with its efforts.

These endeavors formed integral parts of a larger strategy for bringing applicant's renovation project into fruition. However, the opportunity costs associated therewith virtually depleted whatever resources applicant needed to complete the intended work. Hence, from a practical standpoint, applicant's expectations for fulfilling that project remained doubtful throughout 1997.

Such doubts were not present in Weslin, *supra*, and Pearsall, *supra*, for the records clearly demonstrate that the applicants in those cases had substantially completed, or had whatever resources were necessary to complete, their respective construction

projects. Therefore, I cannot apply the holdings in Weslin, and Pearsall to the facts of this case.

Notwithstanding the above, I am required to resolve all doubtful matters in favor of taxation. People ex rel. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Consequently, applicant is not entitled to judgment as a matter of law with respect to its use of the building during the months of January, February, March, April, September, October, November and December, 1997. Accordingly, that part of its motion for summary judgment which seeks relief for those 8 months and the uses associated therewith should be denied.

With respect to the two parking areas located on the subject property, it is briefly noted that such areas can be exempted under Section 15-125 of the Property Tax Code provided that they are: (1) owned by a school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption set forth in the applicable section(s) of the Code; and (2) used as part of a use for which an exemption is provided in the Code and (3) not be leased or otherwise used with a view to profit. 35 **ILCS** 200/15-125; Northwestern Memorial Foundation v. Johnson, 141 Ill. App.3d 309 (1st Dist. 1986).

Applicant owned the parking areas in question throughout 1997. Furthermore, parking areas may be exempted according to the extent to which they facilitate another specifically identifiable exempt use. Streeterville Corporation v. Department of Revenue, 186 Ill. 2d 534 (1999). In this case, applicant's use of the parking areas facilitated its "exclusively religious" use of the building all through May, June, July and August of

1997. Therefore, applicant is entitled to have the parking areas exempted from 1997 real estate taxes, but only for those four months, as a matter of law.

In summary, the evidence applicant offered in support of its motion for summary judgment proves only that the subject property was in actual, exempt use for a very certain, definite and limited segment of the relevant tax year. Accordingly, I recommend that said property, inclusive of the entire building improvement situated thereon and all of its adjacent parking areas, be: (1) taxable all through the period beginning January 1, 1997 through and including April 30, 1997; (2) exempt all through the period May 1, 1997 through and including August 31, 1997; and, (3) taxable all through the period September 1, 1997 through and including December 31, 1997. Therefore, the Department's determination denying the subject property exemption from real estate taxes for the whole 1997 assessment year, on grounds of lack of exempt use, should be modified as set forth herein.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that:

1. Real estate real estate identified by Cook County Parcel Index Numbers 17-27-436-017, 17-27-436-018 and 17-27-436-050 remain on the tax rolls for the period January 1, 1997 through April 30, 1997;
2. The entirety of said property, inclusive of the building improvement situated thereon and all of its adjacent parking areas, be removed from the tax rolls, pursuant to Section 15-40 of the Property Tax Code (35 **ILCS** 200/1-1, *et seq*), but only for the period May 1, 1997 through August 31, 1997; and,
3. The entirety of said property be returned to the tax rolls as of September 1, 1997 and remain thereon throughout the remainder of the 1997 assessment year.

November 1, 2000

Date

Alan I. Marcus
Administrative Law Judge